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No. 734

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

KENNETH C. HITCHCOCK, ET AL.,
Appellants,

VS.

HENRY T. COLLENBERG, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the United States District Court for the District of Maryland is reported in 140 F. Supp. 894. A copy of said opinion is filed herewith as Appendix "A". A copy of the judgment of dismissal entered by the court is filed herewith as Appendix "B".

JURISDICTION

This is an action praying for a Declaratory Judgment, for the convening of a three-judge court to consider the constitutionality of the Maryland "Medical Practice Act",

for permanent and temporary injunctions, and for related relief. Appellants (Complainants below) include a practicing Naturopath, four believers in the efficacy of Naturopathy, both resident and non-resident, and the Maryland Naturopathic Association, Inc., a non-stock, non-profit corporation of the State of Maryland. Appellees are the two "Boards of Medical Examiners of the State of Maryland" and various other officials of the State of Maryland and the City of Baltimore entrusted and charged with the enforcement of the Act.

Appellees filed a Motion to Dismiss, alleging the customary broad grounds of failure to state a claim and lack of jurisdiction. A three-judge court was designated by the Chief Judge of the United States Court of Appeals of the Fourth Circuit and, on March 28, 1956, argument on the motion was heard. On April 19, 1956, the Opinion of Court was filed and, on the same date, a Judgment of Dismissal was signed and entered. Appellants' Notice of Appeal was filed on May 18, 1956 in the United States District Court for the District of Maryland.

The statutory provision believed to confer jurisdiction on the Supreme Court of the United States to review this decision is believed to be *Title 28,* U.S.C., Judiciary and Judicial Procedure, *Section 1253,* Direct Appeals from Decisions of Three-Judge Courts.

The cases believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal include the following:

Palmetto Fire Insurance Company v. Conn., etc., 272 U.S. 295, 71 L. Ed. 243, 47 S. Ct. 88 (Decided October 25, 1926);

Hays v. Port of Seattle, 251 U.S. 233, 64 L. Ed. 243, 40 S. Ct. 125 (Decided January 5, 1920);

St. John v. Wisconsin Employment Relations Board, 340 U.S. 411, 95 L. Ed. 386, 71 S. Ct. 375 (Decided February 26, 1951);
Rooker v. Fidelity Trust Co., 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (Decided December 10, 1923);
Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134, 63 L. Ed. 517, 39 S. Ct. 237 (Decided March 3, 1919);
Savage v. Jones, 225 U.S. 501, 56 L. Ed. 1182, 32 S. Ct. 715 (Decided June 7, 1912);
Clark v. Poor, 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702 (Decided May 31, 1927);
Loeb v. Trustees of Columbia Township, 179 U.S. 472, 45 L. Ed. 280, 21 S. Ct. 174 (Decided December 10, 1900).

The validity of the state statute involved in this action is what is popularly referred to as the "Medical Practice Act" of Maryland. The text of the law, quoted in full in Appendix "C", is contained in Flack's "Annotated Code of Maryland", 1951 Edition, Volume 2, pages 2024 through 2037 — Article 43, Health, sections 117 through 147.

QUESTIONS PRESENTED BY THE APPEAL

1. Whether the Complaint, as amended, set out a cause of action on its face entitling Appellants to a trial on the merits.

Collateral questions are:

2. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, is unconstitutional because it violates Article 4 of the Constitution of the United States.

3. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the

Appellees herein, is unconstitutional because it violates Article 6 of the Constitution of the United States.

4. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, is unconstitutional because it violates the Fourteenth Amendment to the Constitution of the United States.

5. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, is void and unenforceable as class legislation because it violates the "Civil Rights Act" of the United States (Title 42, U.S.C. Sections 1983 through 1985) in any of the following respects:

a. By arbitrarily requiring Naturopaths to pass examinations in non-naturopathic subjects in order to qualify to practice naturopathy.

b. By prohibiting the practice of Naturopathy without showing it to be detrimental to the public or inherently harmful.

c. By unfairly discriminating against Naturopaths in conferring exclusive jurisdiction and control over these non-medical practitioners on their medical competitors.

6. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, is void and unenforceable because it violates the "Anti-Trust Acts" of the United States (Title 15, U.S.C., Sections 1, 2, 4, 7, 9, 15, 21, 25, 26 and 44) in any of the following respects:

a. By establishing medicine as the preferred state system of healing.

b. By curbing the progress of the art of maintaining health in the fields not specifically regulated by statute.

7. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, constitutes an invalid exercise of the police power in that it bans or prohibits the practice of Naturopathy, a harmless system of healing, under the guise of regulating or controlling it.

8. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, arbitrarily suppresses progress, invention and the advancement of science by banning the practice of Naturopathy and abolishing the profession's program of investigation and research.

9. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, arbitrarily interferes with the rights of Kenneth C. Hitchcock by imposing unnecessary restrictions upon his pursuing a lawful occupation, the practice of Naturopathy.

10. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, arbitrarily interferes with the rights of Dena Cohen, Harry E. West, Mary S. Gebhardt and Lewis Kern, Appellants herein and others similarly situated, by preventing them from consulting and being treated by Naturopaths of the State of Maryland for their ills, ailments and diseases.

11. Whether the Maryland Medical Practice Act, as interpreted and enforced by the Courts of Maryland and the Appellees herein, violates and repudiates the "due process" and "equal protection" guarantees of the Law of the Land.

STATEMENT OF THE CASE

At the outset, it would probably be helpful to define Naturopathy. In Dorland's "The American Illustrated Medical Dictionary", 22nd Edition, page 985, it is defined as:

> "A *drugless* system of therapy by the use of physical forces, such as air, light, water, heat, massage, . . ."

A very comprehensive definition will be found in paragraph 16 of the Complaint, pages 6 to 10. In contrast to the practice of "medicine", it eschews the use of drugs and surgery.

The Appellants filed this suit in the United States District Court for the District of Maryland against the two "Boards of Medical Examiners of the State of Maryland" and certain other individuals entrusted and charged with the enforcement of the Maryland Medical Practice Act.

Kenneth C. Hitchcock, one of the Appellants herein, is a practicing Naturopath who has engaged in his profession in the State of Maryland since October, 1938. He holds a Bachelor of Arts Degree from the University of Florida (1918) and a Doctor of Naturopathy Degree from the Blumer College of Naturopathy, Hartford, Connecticut (1921) and has been licensed to practice Naturopathy in Connecticut, Florida and South Carolina.

In *Aitchison v. State,* 204 Md. 538, 105 A. 2d 495 (decided May 25, 1954), the Court of Appeals of Maryland stated, in the final paragraph of its opinion:

> ". . . we are compelled to hold that the Medical Practice Act prohibits a person desiring to engage in the healing art by the practice of Naturopathy from doing so without a license from the State Board of Medical Examiners."

Appellant Hitchcock thereupon applied to the State Board of Medical Examiners for a license to practice

Naturopathy. In a letter dated July 1, 1954, the Secretary of the Board replied, in part, as follows:

> "We are informed by the office of the Attorney General that the Court of Appeals did not mean to imply that the State Board of Medical Examiners is authorized to license Naturopaths as such without regard to the requirements of the Medical Practice Act. In order to be licensed by this Board it is necessary that you meet the requirements for the licensing of those who desire to practice medicine."

The other individual Appellants are lay persons who, believing in the curative efficacy of Naturopathy, regularly engage and intend to continue to regularly engage Naturopaths of Maryland to assist them in maintaining their health and in diagnosing and treating their physical ills and ailments. They are patients of Appellant Hitchcock and other Maryland Naturopaths.

Appellant Dena Cohen asserts she is particularly sensitive to drugs and medicines and has been obliged to discontinue the use of medicines because of their adverse effect on her. She is, accordingly, entirely dependent upon Naturopaths and their natural methods of treatment, for the maintenance of her health.

Aside from the procedural statutes, Appellants cited as the basis of their action the Monopolies and Restraint of Trade (Title 15, U.S.C., Sections 1, 2, 4, 7, 9, 15, 21, 25, 26 and 44) and the Civil Rights sections (Title 42 U.S.C., Sections 1983 through 1985) of the United States Code; Articles 4 and 6 of the Constitution of the United States and the Fourteenth Amendment to the Federal Constitution. The Act is challenged on other grounds which are not of interest in this appeal. The Complaint likewise contains the requisite jurisdictional averment that the Medical Practice Act has been tested in the state courts and that the Court

of Appeals of Maryland, the court of last resort, has adjudicated the act to be constitutional and not violative of either the Laws or the Constitution of the United States. It is, therefore, averred that Appellants are without further redress in the courts of the State of Maryland.

To the Complaint, the Appellees filed a Motion to Dismiss, alleging the usual broad grounds of failure to state a claim and lack of jurisdiction. By agreement of counsel, after a pre-trial conference, the original Complaint was amended by substituting new parties defendant, necessitated by the death or change of status of some of the original parties, and by adding a new paragraph setting forth the arrest on a charge of illegally practicing medicine of Appellant Hitchcock, his incarceration, release on bail and presentment.

On March 28, 1956 a hearing was held by the three-judge court on the Appellees' Motion to Dismiss. The hearing was unique in that, technically, it was neither a law motion hearing nor a trial on the merits. After oral argument, during the course of which some exhibits were offered in evidence, the case was submitted on memoranda prepared by counsel for the parties.

Reduced to their simplest terms, the contentions of the Appellants were:

A. The Medical Practice Act does not apply to the profession of Naturopathy which is governed by the common law and the English statutes in effect on July 4, 1776 and adopted by the State of Maryland by constitutional provision.

B. The Medical Practice Act, insofar as it purports to apply to and control the practice of Naturopathy, is unconstitutional and void as to the practitioners of Naturopathy.

C. The Medical Practice Act, insofar as it purports to apply to and control the practice of Naturopathy, is unconstitutional and void as to the followers of that system of the Healing Art, and the public at large.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This suit challenges the constitutionality or validity of a state statute as interpreted by the highest court of Maryland and the said Three-Judge Court, a question jealously regarded as exclusively its own by the Supreme Court of the United States.

This suit involves human rights and human liberties under the protection of the Federal Constitution and such rights and liberties are always a proper subject for review by the Supreme Court.

The right to follow and practice a profession is a property right and is one of the fundamental rights of citizenship. A person's business, profession or occupation is properly within the meaning and intent of the constitutional provision requiring due process of law, and is included within the right to liberty and the pursuit of happiness guarantees. (*Dent v. West Virginia,* 129 U.S. 114, 32 L. Ed. 623, 9 S. Ct. 231; *Adams v. Tanner,* 244 U.S. 590, 61 L. Ed. 1336, 37 S. Ct. 662.)

Selecting the practitioner of one's choice in the field of healing arts is a property right and is included in the right to liberty and the pursuit of happiness guarantees, whether one selects the allopathic, homeopathic, Christian Science, naturopathic or some other kind or class of healing practitioner.

This right and freedom of citizens to have their human ills treated by naturopathic therapies and practitioners is especially precious — in fact, absolutely essential to the

well-being of those patients who cannot use drugs or medicines.

There is no question raised that the Maryland Board of Medical Examiners have been granted by the Legislature broad powers to regulate the practice of *medicine*. The important federal question herein is that the failure of the Maryland Legislature to enact laws granting to a board or agency power to issue a license to practice *naturopathy* as defined herein did not thereby deny the existence, nor operate as a revocation of the property right to practice naturopathy, or to use the services of the practitioners of naturopathy.

The right to practice naturopathy is like the right to practice medicine, to practice law or to carry on a trade. As Mr. Justice Douglas of this Court emphasized in *Barsky v. Board of Regents of the University of New York*, 347 U.S. 442, 98 L. Ed. 829, 74 S. Ct. 650, this right is a priceless part of the liberty of an individual. It may mean more than any property. Such a right is protected by our Constitution from arbitrary infringement.

The right to grant or revoke a license pursuant to authority granted by the Legislature is reasonably restricted in that the exercise of such authority must have some rational relation to the qualifications required of a practitioner in the profession in which he is engaged. It is one thing to recognize the freedom which the Constitution wisely leaves to the states in regulating the professions. It is quite another, however, to sanction a state's deprivation or destruction of a man's professional life on grounds having no practical relations to his fitness, intellectual or moral, to pursue his profession.

Implicit in the grant of discretion to a state's medical board is the qualification that it must not exercise its super-

visory powers on arbitrary, whimsical or irrational considerations. If a state licensing agency lays bare its arbitrary action, or if the state law explicitly allows it to act arbitrarily, such state action falls within the prohibition of the due process clause.

The right to work is the most valuable liberty that a man possesses. Man has, indeed, as much right to work as he has to live, to be free or to own property. In the absence of valid legislation to the contrary that right may not be gainsaid.

Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of their vitality and efficacy and leads to a gradual depreciation and deterioration of the right sought to be protected. It is the duty of the courts to be watchful for the constitutional rights of the citizens and protect them against encroachment. As was stirringly stated in *Gulf, Colorado & Santa Fe Railway Co. v. W. H. Ellis*, 165 U.S. 150, 41 L. Ed. 666, 17 S. Ct. 255, the court's motto should be "Obsta Principiis".

Finally, the points raised in the Motion To Dismiss do not carry the demurrable potency requisite to justify a dismissal of the action. All the matters properly pleaded were deemed admitted and true, for the purposes of the motion. The gravity of the questions require the introduction of fact evidence for its resolution.

CONCLUSION

Although this Court has denied applications for a writ of certiorari in several cases reaching it from State jurisdictions, it is believed this is the first case involving the practice of Naturopathy to reach the Court on a direct appeal from a Three-Judge Court judgment. It is likewise

believed to be the first case in which patients have joined and requested the Court to interpret and protect their rights. Since the question is so touched with the public health and welfare — the healing art is practiced in various states of the union and in some of the territories — it is respectfully submitted that the matter requires plenary consideration with briefs on the merits and oral argument for its resolution.

In order that the ends of Justice may be achieved, it is respectfully submitted the Court should exercise its jurisdiction and set the matter down for plenary consideration with oral argument or in the alternative, vacate the judgment of dismissal and remand the case for a trial on the merits.

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APPENDIX A

In the United States District Court
for the District of Maryland

Civil No. 7866

Kenneth C. Hitchcock, The Maryland Naturopathic Association, Inc. a body corporate, Dena Cohen, Harry E. West, Mary S. Gebhardt, Lewis Kern,

v.

Henry T. Collenberg, et al., comprising The Board of Medical Examiners for the State of Maryland, et al.

Before Soper, Circuit Judge, and Chesnut and Thomsen, District Judges.

OPINION OF COURT

(Filed April 19, 1956)

Thomsen, District Judge

The Court of Appeals of Maryland has held that naturopathic practitioners are "practicing medicine", as that term is defined in the State Medical Practice Act (Annotated Code of Maryland, 1951 ed., Art. 43, Secs. 117-147), and that a person desiring to engage in the healing art by the practice of naturopathy may not do so without a license from one of the two State Boards of Medical Examiners. *Aitchison v. State*, 204 Md. 538, cert. den. 348 U.S. 880.

The complaint in the instant case is filed by Dr. Kenneth C. Hitchcock, naturopathic practitioner; the Maryland Naturopathic Association; and two Maryland residents, one Pennsylvania resident and one Ohio resident, who regularly engage, and intend to continue to engage, naturo-

pathic practitioners of Maryland to assist them in diagnosing and treating their physical ills and ailments. They seek a ruling that the Act was improperly construed by the Maryland court, or that, as so construed, it violates plaintiffs' rights under Articles 4 and 6 of the Constitution of the United States, the 14th Amendment thereto, the antitrust laws, the Maryland Declaration of Rights and the State Constitution.

The defendants are the members of the two Maryland Boards of Medical Examiners, the Attorney General of the State, the State's Attorney for Baltimore City and the Police Commissioner of that City. They have moved to dismiss the complaint.

Art. 43 of the Maryland Code is entitled "Health". The State Medical Practice Act, secs. 117 et seq., was originally adopted in 1888 and has been amended a number of times.[1] It provides for two Boards of Medical Examiners authorized to issue licenses for the practice of medicine and surgery. The members of one board are appointed by the Medical and Chirurgical Faculty of Maryland, the members of the other by the Maryland State Homeopathic Medical Society. Sec. 118. A person receiving a license from either board is directed to file it with the Clerk of the Circuit Court, who registers the name of the licensee and the name of the president of the board signing the license. Anyone practicing medicine or surgery in Maryland without having obtained a license from one of these boards is guilty of a misdemeanor; so is a person who practices medicine or surgery without being registered. Secs. 126, 127, 128, 131, 136.

Sec. 138 defines "practicing medicine" as follows:

> "Any person shall be regarded as practicing medicine within the meaning of this sub-title who shall append

[1] The original statute was amended in 1892 (Chapter 296), 1894 (Chapter 217), 1896 (Chapter 194), 1902 (Chapter 612), 1904 (Chapter 690), 1908 (Chapter 120), 1914 (Chapter 658), 1916 (Chapter 230), 1943 (Chapter 59), 1945 (Chapter 327, 823), 1947 (Chapter 185) and 1949 (Chapter 682).

to his or her name the words or letters 'Dr.', 'Doctor', 'M.D.', or any other title in connection with his name, with the intent thereby to imply that he or she is engaged in the art or science of healing, or in the practice of medicine in any of its branches, or who shall operate on, profess to heal, prescribe for, or otherwise treat any physical or mental ailment or supposed mental ailment of another, or who shall for hire or for any gratuity or compensation, either directly or indirectly to him or her paid, undertake by any appliance, operation or treatment of whatever nature, to cure, heal or treat any bodily or mental ailment or supposed ailment of another; or who for any hire, gratuity or compensation, either directly or indirectly to him or her paid, by or for any patient, shall undertake to treat, heal, cure, drive away or remove any physical or mental ailment, or supposed ailment of another, by mental or other process, exercised or invoked on the part of either the healer or the patient or both; * * *."

A proviso makes the following exceptions to the foregoing definition: (1) gratuitous services; (2) resident and assistant resident physicians and students at hospitals in the discharge of their hospital or dispensary duties and in the offices of physicians; (3) physicians and surgeons from another State when in actual consultation with a practitioner of this State; (4) commissioned surgeons of the United States Army, Navy or insane hospital service; (5) opticians; (6) chiropodists; (7) midwives; (8) masseurs or other manual manipulators who use no other means; (9) physicians and surgeons residing on the border of a neighboring State and authorized to practice medicine and surgery therein, whose practice extends into this State; (10) dentists; and (11) the sale by druggists of proprietary or patent medicines or any official or standard drug or medicine.

Before the passage of the Medical Practice Act, the Legislature had adopted in 1884 special regulations for the practice of dentistry, Code Art. 32; it has since prescribed special regulations for the practice of optometry (1914),

osteopathy (1914), chiropody (1916), chiropractic (1947), and physicial therapy (1947). An optometrist obtains his license from the Board of Examiners of Optometry, Art. 43, secs. 346-364; an osteopath from the Board of Osteopathic Examiners, secs. 428, 441; a chiropodist from the Board of Chiropody Examiners, secs. 442-455; a chiropractor from the State Board of Chiropractic Examiners, secs. 460-475; and a physical therapist from the State Board of Physical Therapy Examiners, secs. 565-575. Art. 43 also contains provisions regulating funeral directors and embalmers, pharmacists, barbers, registered nurses, plumbers, practical nurses, midwives, hairdressers and beauty culturists, including the practice of trichology.

No special provisions have been made for the licensing of naturopaths, naturopathic physicians or practitioners of naturopathy, although numerous bills have been introduced in the Legislature since 1939. After the decision of the Court of Appeals in the *Aitchison* case in 1954, a bill was introduced in the Maryland Legislature in 1955, known as House Bill 129, which, if it had been enacted, would have added twelve new sections to Art. 43, creating a Board of Naturopathic Examiners, providing for the licensing of naturopathic physicians, and relating generally to the practice of naturopathy. That bill contained the following definition of naturopathy:

> "For the purposes of this sub-title naturopathy is hereby defined to be one of the healing arts whose scope, purposes and methods of practice are as follows: Naturopathy is a system of healing for the prevention, diagnosis, care and treatment of injuries, deformities, ailments, diseases and abnormalities of the human mind and body by means of such arts, sciences, methods and agencies of healing as make use of the healing properties and principles inherent in air, sunshine, light, electricity, heat, cold, climate, water, earths, exercise, work, rest, recreation, sweats, baths, packs, irrigations, inhalations, manipulations, corrective gymnastics, psychology, physics, mechanics, bio-chemistry, dietetics, enzymes, vitamins, minerals, tissue salts and

> substances naturally found in or required by the body, oxygen, ozone, herbs, external applications, apparatus, appliances, mental hygiene, physical culture, first aid, hygiene and sanitation; provided, however, that except as hereinbefore specified, the practice of naturopathy shall not include the use of drugs, surgery, destructively radio-active substances, or x-rays, except for diagnostic purposes."

It is apparent from this definition that the practice of naturopathy comes within the definition of "practicing medicine" in sec. 138, quoted above.

Dr. Hitchcock holds a Bachelor of Arts degree from the University of Florida (1918) and a Doctor of Naturopathy degree from the Blumer College of Naturopathy, of Hartford, Connecticut (1921). He was granted a license to practice naturopathy by the Connecticut State Board of Naturopathic Examiners in 1923 and similar licenses by the Florida State Board of Naturopathic Examiners in 1939 and the South Carolina Board of Naturopathic Examiners in 1932.[2] He has practiced naturopathy openly in Maryland since 1939. He is president of the Maryland Naturopathic Association, which, in 1948, filed a bill in equity against the Board of Medical Examiners in the Circuit Court No. 2 of Baltimore City for an injunction and a decree declaring that the system of healing known as naturopathy is not included in the practice of medicine as regulated by the State Medical Practice Act. A decree dismissing the bill was affirmed by the Court of Appeals of Maryland on the ground that the association had no property interests which might have been affected by any of the alleged acts of the defendants. *Maryland Naturopathic Association v. Kloman*, 191 Md. 628.

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[2] Naturopathy is specifically recognized by name as an independent branch of the healing art and licensed in the following states and territories of the United States: Arizona, 1935; Connecticut, 1923; District of Columbia, 1929; Florida, 1927; Georgia, 1950; Hawaii, 1925; Oregon, 1927; South Carolina, 1937; Texas, 1949; Utah, 1939; Virginia, 1944.

Thereupon Dr. Hitchcock himself filed a bill in equity against the Board of Medical Examiners, the Police Commissioner and the State's Attorney for a declaratory decree and injunction. The decree dismissing that bill was affirmed by the Court of Appeals because "the general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * The mere existence of a criminal statute is not such a threat as to present a justiciable controversy." *Hitchcock v. Kloman*, 196 Md. 351, 356.

Dr. Hitchcock then applied in writing to the State Board of Medical Examiners for a license to practice naturopathy. The Secretary of the Board, in a letter dated July 1, 1954, replied, in part, as follows:

> "* * * We are informed by the office of the Attorney General that the Court of Appeals did not mean to imply that the State Board of Medical Examiners is authorized to license Naturopaths as such without regard to the requirements of the Medical Practice Act. In order to be licensed by this Board it is necessary that you meet the requirements for the licensing of those who desire to practice medicine."

An amendment to the complaint in the instant case alleges that since the filing of the original complaint Dr. Hitchcock has been arrested by officers of the Police Department of Baltimore City on the charge of practicing medicine without a license. After waiving a preliminary hearing, he was released on bail and held for the action of the grand jury. The grand jury has returned a presentment, but the State's Attorney has delayed preparing an indictment because of the pendency of this case, and Dr. Hitchcock is now on bail. An additional prayer has been added seeking an injunction against the State's Attorney from proceeding with the prosecution on that charge.

The complaint in this case contains forty-four numbered paragraphs, with many sub-paragraphs, and twenty-five, now twenty-six, separate prayers for relief. Aside from the matters set out above, it contains an elaborate statement

of the history and principles of naturopathy, which amplifies the statement in House Bill No. 129, quoted above, and makes it even more clear that the practice of naturopathy comes within the definition of "practicing medicine" in Art. 43, Sec. 138 of the Maryland Code.

The salvos fired by the plaintiffs against the Maryland Act raise a great variety of points. Many of them deal with the proper construction of the Act and with the contention that it violates the Maryland Declaration of Rights and the State Constitution. Those questions cannot be considered in this case. They do not involve rights claimed under the Constitution and laws of the United States; there is no requisite of diversity of citizenship to give this court jurisdiction of non-Federal questions; and if there were, we would be bound by the decision of the Court of Appeals of Maryland, which has passed on all of them. *Aitchison v. State*, 204 Md. 538, *cert. den.* 348 U.S. 880; *Watson v. Maryland*, 218 U.S. 173, 175, 177.

We have jurisdiction, however, to consider plaintiffs' contentions that fundamental rights guaranteed by the Federal Constitution are violated. *Watson v. Maryland*, 218 U.S. 173, 175, 177; *Truax v. Rich*, 239 U.S. 33; *Crane v. Johnson*, 242 U.S. 339; *McNaughton v. Johnson*, 242 U.S. 344. Cf. *Watson v. Buck*, 313 U.S. 387. The disagreement between the parties is no longer nebulous or contingent.

The individual plaintiffs, other than Dr. Hitchcock, contend that the enforcement of the Maryland law is tantamount to a prohibition of the practice of naturopathy in Maryland by the only practitioners properly trained to administer "this form of health services", deprives them of the benefits of naturopathy in Maryland which are enjoyed by the residents of other States, threatens their health and happiness, causes them irreparable harm, injury and damage, and violates their personal and civil rights by preventing them from selecting the system of the healing art which they desire, and from deriving "the benefits accruing from the non-medical and non-surgical system known as naturopathy". But the Maryland statute does not prevent plaintiffs

from applying the tenets of naturopathy in their treatment of themselves and their families, nor from receiving any naturopathic treatment which is gratuitously rendered, nor from receiving naturopathic treatment for a fee provided the naturopath or naturopathic practitioner meets the qualifications established by the State of Maryland as necessary for anyone who undertakes to heal the public for a fee. The Maryland law does not prohibit the practice of naturopathy. Any person who has met the qualifications necessary to secure a license to practice medicine, i.e. to engage in the art or science of healing, may apply the principles of naturopathy in his practice. Maryland has simply established certain requirements which must be met by any person who undertakes to practice medicine, as that term is defined in Art. 43, sec. 138, which includes "not only the application of medicine to patients, but any practice of the art of healing disease and preserving the health other than those special branches of the art that were expressly excepted". *Aitchison v. State*, supra, p. 538. The Maryland Court cited in support of this decision *Commonwealth v. Zimmerman*, 221 Mass. 184, and *Collins v. Texas*, 223 U.S. 228, and might have cited others, e.g.; *State v. Henning*, 83 Ohio App. 445, 78 N. E. 2d 588, app. dism. 150 Ohio St. 48, 80 N.E. 2d 164; *Louisiana State Bd. of Medical Examiners v. Fife*, 162 La. 681, 111 So. 58, 54 A.L.R. 594, aff'd *sub nom Fife v. Louisiana*, 274 U.S. 720. Decisions to the contrary in other states, cited by plaintiffs herein, cannot affect our decision, since we are bound by the construction of the statute given by the Maryland court.

Requirements similar to the Maryland requirements have been repeatedly approved, for the reasons stated in the leading case of *Dent v. Virginia*, 129 U.S. 114, at 122:

> "Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances but of the human body in all its complicated parts, and their relation to each other, as

well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified."

That some other states permit the licensing of naturopaths as such, without requiring them to meet the qualifications which Maryland requires, does not mean that the Maryland act abridges the rights of anyone, whether a Maryland resident or not, who would like to be treated in Maryland by a naturopath who has not met the Maryland requirements. The fact that one or more states may have lowered the bars which protect the public from ill-trained practitioners of the healing art does not render other states impotent to protect their own residents. Regulations of a particular trade or business essential to the public health and safety are within the legislative capacity of the state in the exercise of its police power, and unless such regulations are so unreasonable and extravagant as to interfere with property and personal rights of citizens, unnecessarily and arbitrarily, they are within the power of the state. *Williams v. Arkansas*, 217 U.S. 79. This principle was applied to the practice of medicine in a case involving the Maryland Medical Practice Act. *Watson v. Maryland*, 218 U.S. 173, 178. See also: *Dent v. West Virginia*, 129 U.S. 114; *Hawker v. New York*, 170 U.S. 189; *Graves v. Minnesota*, 272 U.S. 425; *Semler v. Oregon*, 294 U.S. 608; *Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716.

Plaintiffs claim that the Maryland Medical Practice Act, as interpreted and enforced by the Maryland courts and by the defendants herein, abridges their privileges and

immunities, deprives them of property without due process of law, and denies them the equal protection of the laws, in violation of Art. 4, Sec. 2, and Art. 6 of the Constitution of the United States, and Sec. 1 of the 14th Amendment. They seek a declaratory decree and an injunction under Title 28 U.S.C. 1331, 1332, 1337, 1343, 2201 and 2202 and under the civil rights acts, Title 42 U.S.C. 1983-1985. They contend that the act is an invalid exercise of the police power, and is arbitrary, unreasonable and discriminatory in that (1) it arbitrarily requires naturopaths to pass examinations in non-naturopathic subjects, (2) prohibits the practice of naturopathy without showing it to be detrimental to the public or inherently harmful, and (3) unfairly discriminates against naturopaths by conferring exclusive jurisdiction over them on their medical competitors.

They also claim that the Maryland law discriminates against naturopaths in that it contains special provisions for the licensing of osteopaths, physical therapists, chiropractors, optometrists and chiropodists and does not contain similar provisions for naturopaths.

These and similar contentions have been before the courts on many occasions. In *Watson v. Maryland*, 218 U.S. 173, involving the very statute at issue here, the Supreme Court said, p. 176:

> "It is too well settled to require discussion at this day that the police power of the States extends to the regulation of certain trades and callings, particularly those which closely concern the public health. There is perhaps no profession more properly open to such regulation than that which embraces the practitioners of medicine. Dealing, as its followers do, with the lives and health of the people, and requiring for its successful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the State may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties."

The plaintiff in that case argued that the Maryland statute denied him the equal protection of the laws, in making unreasonable and arbitrary distinctions in the classification of physicians, and in making unreasonable omissions of certain classes from the requirements of the act. The Supreme Court rejected this contention, applying the rule that "the classification of the subjects of such legislation, so long as such classification has a reasonable basis and is not merely arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to the citizen the equal protection of the laws". 218 U.S. at 178.

Discussing the exceptions in what is now Art. 43, Sec. 138 of the Maryland Code, the Supreme Court said:

> "* * * We shall not take occasion to consider each of these exceptions. A reading of them makes it manifest that they are not without reason. Before a law of this kind can be declared violative of the Fourteenth Amendment as an unreasonable classification of the subjects of such legislation because of the omission of certain classes, the court must be able to say that there is 'no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched'. Such was the expression of this court in *Missouri, Kansas & Texas R.R. Co. v. May*, 194 U.S. 269, quoted with approval in *Williams v. Arkansas, supra.*" 218 U.S. at 179.

Other cases have applied the same principles to complaints by chiropractors and naturopaths, who complained because special provisions were not made for them. *Aitchison v. State*, 204 Md. 538, *cert. den.* 348 U.S. 880; *Louisiana State Bd. of Medical Examiners v. Fife*, 162 La. 681, 111 So. 58, 54 A.L.R. 594, aff'd *sub nom Fife v. Louisiana*, 274 U.S. 720, and cases cited therein.

In *Louisiana State Board v. Fife, supra*, defendant chiropractors contended that they were deprived of liberty and property without due process of law because they were required to stand an examination in surgery and materia

medica. They complained that those who practice chiropractic have no need for those subjects, which bear no relation to that system. The Louisiana court observed that no person has a natural or absolute right to practice medicine or surgery, but that it is a right granted upon conditions and that a state, under its police power, may regulate within reasonable bounds, for the protection of the public health, the practice of medicine either by defining the qualifications which one must possess before being admitted to practice. The court recognized that the legislature, in defining the qualifications required, cannot prescribe, as a condition of the right to practice, knowledge of a subject which bears no relation to the practice of medicine; but the court held that this does not mean that the legislature must make requirements such as to provide for every school of medicine that may exist, by requiring of those belonging to each particular school a knowledge only of those subjects which the theory of healing advocated and put in operation by each school requires. Were it otherwise, the legislature would be greatly hampered in the exercise of its power to protect the general health and the public from imposition and fraud. This is good law and good sense in Maryland as well as Louisiana.

Another contention of defendants in the Louisiana case was that since osteopaths, dentists, chiropodists and trained nurses were exempted from the operation of the general law and were not required to take a full course in materia medica, surgery, etc., the general law was unconstitutional because it discriminated against chiropractors by not granting them similar privileges. The Louisiana court held, however, that since the legislature is not called upon to recognize every school of medicine and to deal with it as such, defendants could not complain, on the ground of being unjustly discriminated against, that the legislature had not deemed it proper to recognize their school of medicine and make special provision for those desiring to practice that system by prescribing a course of study in accord with the theories which it holds for restoring health. The court cited, inter alia, *Johnson v. State* (Tex. Civ. App.), 267 S.W. 1057, and *State v. Morrison,* 98 W. Va. 289, 127 S.E. 75.

In *Aitchison v. State*, supra, the Maryland court said:

> "It is beyond question that the State has the power to regulate any of the special systems or branches of the medical art independent of the general practice of medicine. The regulations adopted by the State, in the exercise of the power to regulate the treatment of disease, need not be uniform with respect to all methods and systems of practice, but distinctions may be made and schools or methods of practice may be exempted from the regulations or subjected to peculiar regulations as long as the discrimination is not arbitrary or unreasonable." 204 Md. at 549, citing *Crane v. Johnson*, 242 U.S. 339 and a number of State court cases.

The special provisions of Art. 43 of the Maryland Code for the practice of optometry, osteopathy, chiropody, chiropractic and physical therapy limit in every case the type of treatment which the practitioner is authorized to administer; with respect to optometry and chiropody, the ills and diseased conditions which may be treated are strictly limited; and physical therapists may treat under their license only patients diagnosed and referred by licensed medical doctors. The Maryland legislature had the right to provide special regulations of these groups and to refuse to provide similar special regulations for naturopaths, who undertake to treat any and all diseases in a wide variety of fashions.

Plaintiffs contend that the Act is void because of vagueness in that it does not stipulate which of the two State Boards of Medical Examiners "shall have jurisdiction over this system of healing". The Act provides for two boards, one appointed by the Medical and Chirurgical Faculty and the other appointed by the Homeopathic Society. Sec. 118. A person who wishes to obtain a license to practice medicine in Maryland may apply to either board. The fact that naturopaths, such as the plaintiff Hitchcock, along with all others who desire to practice medicine in Maryland, are given the choice of applying to either one of two boards does not deprive them of any rights and privileges they

would have if the statute designated the particular board to which they must apply, or if the statute provided for a single board.

Plaintiffs contend that the Maryland act, as interpreted by the Maryland court, violates the anti-trust laws, Title 15 U.S.C., secs. 1-27, 44, in that it grants the exclusive privilege of practicing medicine and surgery to persons licensed by the State Board of Medical Examiners, and thus established medicine as the preferred State system of healing, and curbs the progress of the art of maintaining health in the fields not specially regulated by the statute. The complete answer to this contention is that the anti-trust laws deal with individual activity and not with State activity, *Parker v. Brown*, 317 U.S. 341, 350; whereas all of the matters charged in the complaint as violative of the anti-trust laws are regulations prescribed by the Maryland legislature.

The amended complaint alleges no facts entitling the plaintiffs to any relief in this case, and must be dismissed, with costs.

APPENDIX B

In the United State District Court
for the District of Maryland

Civil No. 7866

Kenneth C. Hitchcock, et al.,

vs.

Henry T. Collenberg, et al., comprising the Board of Medical Examiners for the State of Maryland, et al.

JUDGMENT

This Court having, on April 19, 1956, filed its opinion, including its findings of the fact and conclusion of law; now, in accordance therewith,

It is Ordered, Adjudged and Decreed that the Complaint herein be, and the same hereby is Dismissed, with taxable costs allowed to the defendant.

This the 19th day of April, 1956.

/s/ MORRIS A. SOPER,
United States Circuit Judge.

/s/ W. CALVIN CHESNUT,
United States District Judge.

/s/ ROSZEL C. THOMSEN,
United States District Judge.

APPENDIX C

"Medical Practice Act" of Maryland
Flack's "Annotated Code of Maryland", 1951 Edition,
Volume 2, pages 2024-2037.

Practitioners of Medicine

An. Code, 1939, sec. 116. 1924, sec. 115. 1912, sec. 107.
1904, sec. 78. 1888, sec. 39. 1888, ch. 429.
1892, ch. 296. 1902, ch. 612.

117. All persons now practicing medicine and surgery, or who shall hereafter begin to practice medicine and surgery in any of their departments, except dentistry, in the State of Maryland, shall possess the qualification required by this sub-title.

An. Code, 1939, sec. 117. 1924, sec. 116. 1912, sec. 108.
1904, sec. 79. 1888, sec. 40. 1888, ch. 429.
1892, ch. 296. 1902, ch. 612.

118. From and after the first Tuesday in June, eighteen hundred and ninety-two, there shall be and continue to be two separate boards of medical examiners for the State of Maryland — one representing the Medical and Chirurgical Faculty of the State of Maryland, and one representing the Maryland State Homeopathic Medical Society of the State of Maryland. The members of said respective boards in office on the eleventh day of April 1902, shall continue to hold and exercise their respective offices up to the first Tuesday in June, nineteen hundred and two. On the first Tuesday in June, nineteen hundred and two, said two boards of medical examiners shall be reorganized, and thereafter said boards shall be constituted as follows: Each of said boards shall consist of eight members, who shall be selected by the Medical and Chirurgical Faculty of the State of Maryland, and the Maryland State Homeopathic Medical Society, respectively, at the annual meetings of said respective societies; and each appointee is immediately after his election to be furnished with a certificate thereof by the society electing him. Each such member of said respective

boards, except those elected in the year nineteen hundred and two, shall serve for four years, or until his successor is appointed and qualified. At their respective annual meetings held in the year nineteen hundred and two, each of said aforementioned societies shall elect the full number of eight examiners for its respective board, of whom two shall be elected for four years, two for three years, two for two years, and two for one year, and thereafter two examiners shall be elected by each society in each year, as hereinbefore provided, to serve for a term of four years or until their successors are appointed and qualified, the outgoing members to be eligible for re-election. The terms of office of all members so elected shall begin on the first day in June, in the year in which they shall be respectively elected; each board is to have the exclusive right to examine, pass upon the qualifications of and license its own applicants. The examiners shall be physicians actually engaged in the practice of medicine or surgery in the State of Maryland, and of recognized ability and honor. No member of any medical college or university, who passes upon the qualifications of graduates of any medical school, shall be eligible to serve as a member of either of said boards. In case of a vacancy occurring in either of said boards, the board in which such vacancy shall occur shall fill the same until the next annual meeting of the Medical and Chirurgical Faculty, or the Maryland State Homeopathic Medical Society, according as the board in question may be the representative of one or other of said societies, when said society shall elect an examiner to serve for the remainder of such unexpired term.

An. Code, 1939, sec. 118, 1924, sec. 117. 1912, sec. 109. 1904, sec. 80, 1902, ch. 612, sec. 40A.

119. Each of said boards shall, at its meeting on the first Tuesday in June of each year, appoint a secretary-treasurer for the board, whose term of office shall last for one year, and who shall be eligible for re-appointment, and whose duties shall be as follows: Within sixty days from the time of his appointment by his respective board, it shall be the

duty of the clerk of the circuit court of Baltimore City and the clerk of the circuit court for each county in the State to furnish the secretary-treasurer of each board a list of all physicians who have been legally registered in such court. To all those physicians who have at that time been practicing in the State without having been legally registered said secretary-treasurer shall send a printed notice of the section of this article relating to the duty of the police commissioner in Baltimore City and the sheriffs of the counties of the State under this law. Within four months of the time of his appointment he shall see that all physicians entitled to register have been registered, and that the names of all those who are not entitled to be registered under this sub-title have been presented for prosecution to the state's attorney of the city of Baltimore, and of each county in the State in which the accused, respectively, reside. Those physicians, who, being entitled to register under this sub-title, yet have failed to comply at the expiration of this time — four months from the election of the secretary-treasurer of the board — shall also be prosecuted and no one after the eleventh day of April, 1902, shall be allowed to practice medicine or surgery without being duly registered according to the provisions of this sub-title. The secretary-treasurer shall keep the official records of the board for which he is secretary, as provided for in section 120 of this sub-title, the examination papers of applicants for at least three years, after they have been passed upon by the board, after which they are to be destroyed, and a complete list of all registered physicians in the entire State. He shall call to the attention of the state's attorneys of Baltimore City and of the different counties throughout the State all violations of the law under this sub-title. He shall collect and hold all moneys belonging to the board, for which he shall give bond to the State of Maryland in the sum of $1,000, the same to be held by the president of the board. He shall receive from the income of the board such salary as his respective board may determine.

An. Code, 1939, sec. 119. 1924, sec. 118. 1912, sec. 110. 1904, sec. 81. 1888, sec. 41. 1888, sec. 429. 1892, ch. 296. 1902, ch. 612.

120. Each board of medical examiners shall meet on the first Tuesday in June in each year for the purpose of reorganization. At said first meeting of said respective boards each of said boards shall effect an organization by the election from its own membership of a president, and shall also appoint a secretary-treasurer, as otherwise provided in this sub-title. For the purpose of examining applicants for license, each of said boards of medical examiners shall hold one or more stated or special meetings in each year, due notice of which shall be made public at such time and places as may be determined by the members thereof, respectively. At said stated or special meeting a majority of the members of the board shall constitute a quorum thereof. Each of said boards of medical examiners shall keep an official register of all applicants for examination for a license to practice medicine and surgery in this State; said register for license shall show the name; age and last place of residence of each candidate, the school from which he or she may have graduated, and whether such applicant was rejected or licensed under this sub-title; but such matters shall not be written in said register or made public until after the examination.

An. Code, 1939, sec. 120. 1924, sec. 119. 1912, sec. 111. 1904, sec. 82. 1888, sec. 42. 1888, sec. 429. 1892, ch. 296. 1902, ch. 612. 1914, ch. 658. 1949, ch. 682, sec. 120.

121. At the first meeting of an examining board, or at a stated or special meeting held subsequently, suitable provision shall be made by each of the examining boards to prepare a schedule of examination upon anatomy, physiology, medical chemistry, surgery, practice of medicine, therapeutics and pharmacology, obstetrics, and pathology, and the same standard of excellence shall be required from all candidates. In the department of therapeutics and practice, the question shall be in harmony with the tenets of

the school selected by the candidate; the standard of requirements therein to be established by each board for itself.

An. Code, 1947 Supp., sec. 121. 1939, sec. 121. 1924, sec. 120. 1912, sec. 112. 1904, sec. 82. 1888, sec. 42. 1888, sec. 429. 1892, ch. 296. 1902, ch. 612. 1914, ch. 658. 1916, ch. 230. 1943, ch. 59. 1949, ch. 682, sec. 121.

122. All persons, except physicians who were practicing medicine in this State prior to the first day of January, 1898, who are now practicing medicine or surgery and can prove by affidavit that within one year of said date said physician had treated in his professional capacity at least twelve persons, who shall commence the practice of medicine or surgery in any of their branches after the eleventh day of April, 1902, shall make a written application for license to the president of either board of medical examiners which said applicant may elect, accompanied by satisfactory proof that the applicant is more than twenty-one years of age, is of good moral character and has received a diploma conferring the degree of doctor of medicine from some legally incorporated medical college in the United States or some foreign country; said diploma, if from a college in the United States, must have been conferred by a legally incorporated college having entrance requirements, standard of education, and requirements for graduation as defined by the Association of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy, respectively; and if from a college in a foreign country, the entrance requirements, standard of education, and requirements for graduation shall be equivalent to the standard defined by the Association of American Medical Colleges or the Intercollegiate Committee of the American Institute of Homeopathy, respectively, provided, that this requirement shall not apply to any physician who shall, prior to the eleventh day of April, 1902, have practiced outside of this State for at least three years, and who shall have been duly registered or licensed in the place where he has so practiced; provided also, that in the case of students who, on April 11, 1902, shall be in their

second year in a medical college, a three years' course of study, or attendance on three courses of lectures delivered in different years, shall satisfy said requirements. Proof of the qualification of applicants as above shall, if required, be made by affidavits at the time of the making of said application and payment of fee as provided. The president of the board to whom such application shall have been made, if satisfied with the same, shall direct the secretary-treasurer thereof to issue to said applicant an order for examination, and when said applicant shall have passed an examination as to proficiency satisfactory to said board the president thereof shall grant to such applicant a license to practice medicine and surgery in the State of Maryland. If the president of either board of medical examiners shall have refused any application, either for want of the qualifications necessary to entitle such applicant to an examination, as hereinbefore provided, or for want of proficiency of such applicant upon being subjected to an examination, then the president of neither of said boards shall entertain or pass upon a subsequent application from said applicant until after the expiration of six months from the rejection of said previous application. The respective boards are authorized to license without examination applicants who present proper certificates of proficiency and professional standing at the time of application issued by the National Board of Medical Examiners or boards of medical examiners of the District of Columbia and of other States, the requirements of which are of as high a standard as those governing the boards of medical examiners of this State; provided such boards of such States or District grant the same privileges to licentiates of the examining boards of Maryland; such applicants, however, from the National Board and the District of Columbia and other States still being required to furnish the same proof of qualifications required of other applicants by this section. Either examining board may, in its discretion, grant a license upon a special examination to a physician or surgeon from another State, the District of Columbia, or a foreign country, provided the applicant has met all the preliminary and professional qualifications required for obtaining a license by

examination in this State, has been in reputable practice for a period of ten years, and has reached a position of conceded eminence and authority in his profession. Medical students, at the end of their second year of study, who have, as verified by the certificate of the dean of the college which they have attended, completed the studies of anatomy, physiology, and medical chemistry in said college, shall on application be examined in such studies by the State licensing board, the result of said examination to be considered as part of the final examination, the full regular fee to be paid at this time, no part thereof to be returned, but placed to their credit for the remainder of the examination yet to be taken. Medical students who have, as verified by the certificate of the dean of the college which they have attended, completed a full four years' course of studies and lectures, but who have not yet received their diplomas, shall upon application be examined in all the branches enumerated in Section 121 of this Article by the State licensing board, the final certificate and license of the said board being withheld until the diploma of the proper medical college, with the candidate's name inscribed, be produced to the secretary of the Board.

An. Code, 1939, sec. 123. 1924, sec. 122. 1912, sec. 114. 1904, sec. 85. 1888, sec. 44. 1888, ch. 429, sec. 6. 1892, ch. 296.

123. All examinations shall be conducted in such manner that the name, school of graduation and preparatory training of said applicant shall not be made known to the board of examiners until his examination papers have been graded. An applicant receiving a majority of the votes of the board before whom the applicant appears shall be considered to have passed a satisfactory examination and entitled to the license of said board.

An. Code, 1939, sec. 124. 1924, sec. 123. 1912, sec. 115. 1904, sec. 86. 1888, sec. 45. 1888, ch. 429, sec. 7. 1892, ch. 296. 1902, ch. 612.

124. A fee of Twenty Dollars shall be paid to the secretary-treasurer of the board, before whom the applicant ap-

pears, before such examination is had, which payment shall entitle said applicant to a second examination, in case of failure, at the expiration of six months and within twelve months thereafter; said fee to be applied by said board toward paying the expenses of said board.

An. Code, 1939, sec. 125. 1924, sec. 124. 1912, sec. 116. 1904, sec. 87. 1888, sec. 46. 1888, ch. 429, sec. 8. 1892, ch. 296. 1902, ch. 612.

125. The board shall refuse to grant a license to any applicant who may be radically deficient in his examination in any essential branch; provided, that in any case of failure at any such examination, the candidate shall not be permitted to take another examination before either board until after the expiration of six months from the date of his rejection; provided, however, that any applicant who has heretofore, during the previous year before the eleventh day of April, 1902, or who shall hereafter so fail, shall be credited as having passed in such branches as he has or shall have been found proficient in, and he shall not be again examined in said subjects.

An. Code, 1939, sec. 126. 1924, sec. 125. 1912, sec. 117. 1904, sec. 88. 1888, sec. 47. 1888, ch. 429, sec. 9. 1892, ch. 296. 1894, ch. 217.

126. Every license to practice medicine and surgery, issued pursuant to the provisions of this sub-title, shall be subscribed by the president and secretary of the board before whom the applicant has passed; it shall also have affixed to it by the person authorized to affix the same, the seal of said Medical and Chirurgical Faculty of Maryland, or of the Maryland State Homeopathic Medical Society, as the license may require; every such license to be in the following form and to the following effect:

To all whom it may concern, greeting:

Be it known, that ....., on the ..... day of ....., A. D., having offered us satisfactory proof that ..... was more than twenty-one years of age, and had received a

proper preliminary education; we therefore give a written order for the examination of said ..... before one of the boards of medical examiners of the State of Maryland; that the said ..... was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we, therefore, have granted to said ..... this our license to practice medicine and surgery in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our said society, this ..... day of ....., A. D. ....., president; ....., secretary.

[Seal of Society.]

An. Code, 1947 Supp., sec. 127. 1939, sec. 127. 1924, sec. 126. 1912, sec. 118. 1904, sec. 89. 1892, ch. 296, sec. 48. 1902, ch. 612. 1904, ch. 690. 1945, ch. 823.

127. Any person receiving a license from either of said boards shall file the same at once with the clerk of the circuit court of the county in which he or she may reside, or with the clerk of the circuit court of Baltimore City, if said person shall reside therein, and it shall be the duty of said clerk to register the name of said person and of the president of the board signing said license in a book kept for the purpose, as a part of the records of his office; and the number of the book and the page therein containing said recorded copy shall be noted by said clerk upon the face of said license. In case said person should, after the recording of such license, permanently remove his or her residence, to some other part of the State, or to Baltimore City, he or she shall thereupon at once file said license, or certified copy thereof, for record as aforesaid, with the clerk of the circuit court of the county or city to which he or she shall have so removed; said record shall be open to public inspection under proper restrictions as to their safe keeping, and in all legal proceedings shall have the same weight as evi-

dence that is given to the records of conveyances of land. The fees for such registration shall be Two Dollars ($2.00), to be paid by the person whose license is registered.

An. Code, 1939, sec. 128. 1924, sec. 127. 1912, sec. 119. 1904, sec. 90. 1892, ch. 296, sec. 50.

128. Any person to whom the provisions of this sub-title applies, practicing or attempting to practice medicine or surgery in this State, without first having obtained the license of one of said boards of medical examiners, shall be guilty of a misdemeanor, and shall pay a fine of not less than Fifty Dollars nor more than Two Hundred Dollars for each offense, or in default of payment shall be confined in the city or county jail until the fines and costs are paid, and shall be debarred from recovering compensation for services rendered as such physician or surgeon.

An. Code, 1939, sec. 129. 1924, sec. 128. 1912, sec. 120. 1904, sec. 91. 1892, ch. 296. 1902, ch. 612, sec. 52.

129. Said boards shall make a report to the Medical and Chirurgical Faculty of Maryland and the Maryland State Homeopathic Medical Society, respectively, at each annual meeting of said respective societies.

An. Code, 1939, sec. 130. 1924, sec. 129. 1912, sec. 121. 1904, sec. 92. 1902, ch. 612, sec. 52A.

130. Said board shall upon request issue certificates of professional standing to physicians moving out of the State.

An. Code, 1939, sec. 131. 1924, sec. 130. 1912, sec. 122. 1904, sec. 93. 1894, ch. 217, sec. 53.

131. From and after the first day of July, 1894, no person shall practice medicine or surgery in the State of Maryland, unless he or she shall be duly registered as a physician or surgeon, in accordance with the provisions of this sub-title of this Article.

An. Code, 1939, sec. 132. 1924, sec. 131. 1912, sec. 123. 1904, sec. 94. 1894, ch. 217, sec. 54. 1896, ch. 194.

132. Every person who was practicing medicine in the State of Maryland on or before the first day of June, 1892, shall be entitled to [be] registered as a physician or surgeon, or both, upon making application to the president of either board of state medical examiners, which application shall be in writing and verified by the oath of said applicant, taken before any officer entitled to administer oaths under the law of this State, and shall state that the applicant was a duly qualified lawful practitioner of medicine, in good standing, actually engaged in the practice of such profession in said State, on or before said first day of June, 1892. And upon receiving said application, and being satisfied of the truth of said statement therein contained, said president of such board shall issue or endorse his permit for such applicant to be registered upon a copy of such application, which permit shall also be countersigned by the secretary of said board; and any president of such board to whom such application is addressed may, in his discretion, make inquiry, and examine witnesses under oath, or receive other evidence as to the truth of the statements contained in such application for a permit to be registered; and if the president of either of such boards of medical examiners shall act upon such application, and shall refuse the same, then no president of the other of said boards shall entertain or act upon any application of such applicant for such permit. And upon the presentation of a permit to be registered, signed by the president, and countersigned by the secretary of either of said boards of medical examiners, to the clerk of the county where such applicant may reside, or to the clerk of the circuit court of Baltimore City, if said applicant shall reside in Baltimore City, it shall be the duty of the said clerk to register such application and permit, and the name of such applicant as physician or surgeon, or both, in a book to be kept for such purpose, and a certified copy of such entry of registration under the seal of the court, shall be legal evidence of such registration in all the courts of the State; provided, however, that the provisions of this

sub-title shall not apply to those practicing medicine in the State of Maryland prior to June, 1892, and who registered as practitioners of medicine prior to July, 1894.

An. Code, 1939, sec. 133. 1924, sec. 132. 1912, sec. 124. 1904, sec. 9. 1894, ch. 217, sec. 55.

133. All persons who have commenced to practice medicine or surgery in the State of Maryland since the first day of June, 1892, or who shall hereafter commence to practice medicine or surgery in this State, shall not be entitled to be registered in the registry of physicians and surgeons, as required by law, except upon filing with the clerk of the circuit court of the county or city in which he or she shall reside, a license from one of the duly constituted boards of medical examiners of this State, in accordance with the terms of Sections 126 and 127, except that physicians and surgeons who have come into this State since said first day of June, 1892, or who shall hereafter come into this State to follow the practice of medicine and surgery, may receive a license, which shall entitle them to be registered as physicians and surgeons, in accordance with law, upon application to one of the duly constituted boards of medical examiners, in accordance with the provisions of Section 134[1] of this sub-title (1939 Ed.).

An. Code, 1939, sec. 135. 1924, sec. 134, 1912, sec. 126. 1904, sec. 97. 1894, ch. 217, sec. 57.

134. All persons whose licenses have been heretofore filed and recorded in accordance with Section 127 shall be held to be duly registered physicians and surgeons within the provisions of Section 132, and all persons who shall hereafter receive and file licenses, to be recorded in accordance with said Section 127, shall be registered as physicians and surgeons under said section, and the fee to be paid for such registration and for the registration of the application to the clerk or the license therewith, as the case may require, shall be One Dollar.

[1] Sec. 134 of 1939 Ed. repealed by ch. 682, 1949.

An. Code, 1939, sec. 136. 1924, sec. 135. 1912, sec. 127. 1904, sec. 98. 1894, ch. 217, sec. 58.

135. If any person shall unlawfully obtain and procure himself to be registered as physician or surgeon, either by false and untrue statement contained in his application to the clerk of the court, as required by this sub-title, or by presenting to said clerk a false or untrue license, or one fraudulently obtained by false and fradulent statements made to one of said boards of medical examiners, he or she shall be deemed guilty of a misdemeanor, and shall be fined not less than Fifty Dollars nor more than Five Hundred Dollars, and shall forfeit all rights and immunities obtained or conferred upon him by virtue of such registration as physician or surgeon.

An. Code, 1939, sec. 137. 1924, sec. 136. 1912, sec. 128. 1904, sec. 99. 1894, ch. 217, sec. 59.

136. Any person who after the first day of July, 1894, shall practice or attempt to practice medicine or surgery in this State, without being registered in accordance with the provisions of this sub-title, shall be guilty of a misdemeanor, and shall be fined not less than Ten Dollars nor more than Two Hundred Dollars for each offense.

An. Code, 1939, sec. 138. 1924, sec. 137. 1912, sec. 129. 1904, sec. 100. 1896, ch. 194, sec. 61.

137. Any citizen of Maryland having information which causes him to believe that any person has been heretofore wrongfully and improperly registered as physician or surgeon, or both, upon his application to the clerk of any court may apply, by petition, to the circuit court of the county wherein such registration was made, or to the city court of Baltimore City, if such registration was in Baltimore City, which petition shall be under oath, and shall state that the petitioner is informed and believes that the person named therein has been heretofore improperly and wrongfully registered as physician or surgeon, or both, upon his own application and affidavit upon the register of phy-

sicians or book kept for such purpose in any court of this State, for the reason (as said petitioner is empowered) that such person was not lawfully practicing medicine in the State of Maryland as a duly qualified practitioner of medicine in said State entitled to be registered as a physician or surgeon upon his own application to the clerk of said court; and that said petitioner prays that the name of such person shall be struck from the registry of physicians aforesaid. Upon the filing of such petition the court or one of the judges thereof shall pass an order requiring the person therein alleged to be wrongfully or improperly registered to answer the same, under oath, on or before a date to be named within thirty days from the date of such order, and to show cause, if any there be, why the prayer of such petition should not be granted, which order shall be served upon said last named person; and if said petition shall not be answered within the time named, as aforesaid, or if the answer thereto shall be adjudged insufficient by the court, then the court shall pass an order directing that the name of such person alleged to be wrongfully or improperly registered shall be stricken from the registry of physicians or surgeons where the same shall have been registered; but if said petition shall be answered by the defendant, being the person against whom it is exhibited by an answer under oath, fairly and fully denying the allegations of said petition, the issues thus raised shall be heard and determined by the court, and either party may be entitled to a jury trial before a jury of the regular panel empaneled to try common law cases in said court; and the defendant shall be competent and compellable to testify at such hearing, and upon such hearing the court shall render judgment with costs against the unsuccessful party. And if it shall determine that said defendant was not practicing medicine in the State of Maryland on or before the date of June 1, 1892, not being a lawful practitioner of medicine in said State, on or before said date, it shall pass an order directing the name of said defendant to be stricken from the registry of physicians or surgeons, or both, which order shall be certified by the clerk of the court wherein said defendant was registered, and he shall thereupon strike his name from

said registry. But the decision upon such petition shall have no force and effect in any criminal prosecution under this sub-title.

An. Code, 1939, sec. 139. 1924, sec. 138. 1912, sec. 130. 1904, sec. 101. 1902, ch. 612, sec. 61. 1908, ch. 120.

138. Any person shall be regarded as practicing medicine within the meaning of this sub-title who shall append to his or her name the words or letters "Dr.," "Doctor," "M. D.," or any other title in connection with his name, with the intent thereby to imply that he or she is engaged in the art or science of healing, or in the practice of medicine in any of its branches, or who shall operate on, profess to heal, prescribe for, or otherwise treat any physical or mental ailment or supposed mental ailment of another, or who shall for hire or for any gratuity or compensation, either directly or indirectly to him or her paid, undertake by any appliance, operation or treatment of whatever nature, to cure, heal or treat any bodily or mental ailment or supposed ailment of another; or who for any hire gratuity or compensation, either directly or indirectly to him or her paid, by or for any patient, shall undertake to treat, heal, cure, drive away or remove any physical or mental ailment, or supposed ailment of another, by mental or other process, exercised or invoked on the part of either the healer or the patient or both; but nothing herein contained shall be construed to apply to gratuitous services, nor to any resident or assistant resident physicians or students at hospitals in the discharge of their hospital or dispensary duties, or in the office of physicians, or to any physician or surgeon from another State, territory or district in which he resides when in actual consultation with a legal practitioner of this State; or to commissioned surgeons of the United States army, or navy, or insane hospital service, or opticians or chiropodists, or to midwives, or to masseurs, or other manual manipulators who use no other means; nor shall the provisions of this sub-title apply to physicians or surgeons residing on the borders of a neighboring State, and duly authorized under the laws thereof to practice medicine or

surgery therein, whose practice extends into the limits of this State; provided, that such practitioners shall not open an office or appoint places to meet their patients or receive calls within the limits of this State without complying with the provisions of this sub-title; provided, that the same privileges be accorded to licensed physicians of this State; provided, further, that nothing in this sub-title shall annul any of the provisions of Article 32, title "Dentistry," nor shall apply to any registered graduate of dental surgery now practicing in the said State of Maryland, with the sign titles: Dentist, surgeon dentist, dental surgeon or stomatologist; and provided further, that nothing herein contained shall be so construed as to prevent or in any way make unlawful or interfere with the sale by manufacturing, wholesale or retail druggists, or any persons dealing in drugs or medicines of any proprietary or patent medicine or any official or standard drug or medicine.

1947 Supp., sec. 139A. 1947, ch. 185.

139. Nothing in this sub-title or elsewhere in the laws of Maryland shall prevent any Christian Science Practitioner duly registered in the Christian Science Journal of the Christian Science Publishing Society, Boston, Massachusetts, from treating human ills in accordance with the tenets of Christian Science or from making an adequate charge for services performed.

An. Code, 1939, sec. 140. 1924, sec. 139. 1912, sec. 131. 1904, sec. 102. 1902, ch. 612, sec. 61A.

140. It shall be the duty of the police commissioner of Baltimore City, and of the sheriff of each county in the State, to see that all practicing physicians in the State shall be legally registered according to the provisions of this sub-title, and to report to the state's attorney of the city or county all cases of the violation of the provisions of this sub-title.

An. Code, 1939, sec. 141. 1924, sec. 140. 1912, sec. 132. 1904, sec. 103. 1896, ch. 194, sec. 63.

141. It shall be the duty of the secretary of either or both of said state boards of medical examiners to inquire into all violations of law under this article and to institute all proceedings or prosecutions thereof, and all expenses incurred by any secretary of either of such boards hereunder shall be allowed and paid out of the funds acquired by or belonging to said boards respectively.

An. Code, 1939, sec. 142. 1924, sec. 141. 1912, sec. 133. 1904, sec. 104. 1896, ch. 194, sec. 64.

142. The said board of medical examiners shall have full control over the expenditures and disposition of the funds collected from the fees and charges authorized to be made under the terms of this sub-title, and shall fix and allow such compensation as they may deem proper for service rendered in the performance of the duties required by this sub-title by members of said board or others, with the full power also to allow and discharge all proper expenses of said board, and any surplus, to dispose of as said board may deem for the advantage of the practice of medicine in this State.

An. Code, 1939, sec. 143. 1924, sec. 142. 1912, sec. 134. 1904, sec. 105. 1902, ch. 612, sec. 64.

143. Any person practicing or attempting to practice medicine under the name of any other person, whether that person be a resident of this State or not, or whether he or she be deceased or not, or any person acting under the name of and as agent of any other person, in the capacity of a practitioner of medicine or surgery, shall be guilty of a misdemeanor, and upon conviction by any court having criminal jurisdiction shall be punished by imprisonment in the city or county jail for not less than thirty days nor more than one year, or by a fine of not less than Twenty Dollars nor more than Five Hundred Dollars, or both, in the discretion of the court, for each offense.

An. Code, 1939, sec. 144. 1924, sec. 143. 1912, sec. 135. 1904, sec. 106. 1902, ch. 612, sec. 65.

144. Either board of medical examiners of this State may, by a vote of five members, revoke any license which it has issued, and may cause the name of any physician licensed by said board to be removed from the register of the licentiates of the city or county where it may be recorded for any of the following causes, to wit: The use of fraud or deception in passing the examination provided in this sub-title, habitual drunkenness, criminal abortion, conviction of crime involving moral turpitude or unprofessional or dishonorable conduct. Before proceeding to revoke any such license, the person against whom complaint is made shall be furnished with a copy of the complaint and charges made against him, and shall be given an opportunity for a hearing before the board, in person or by attorney, and at such hearing testimony may be offered for and against the accused. The action of the board shall be reduced to writing, stating also the reasons for said action, and a copy thereof shall be delivered or mailed to the person against whom complaint is made; within sixty days after said notice of revocation of license shall have been delivered or mailed to any person said party shall have the right of appeal to the circuit court of the city or county wherein he may reside, the judge or judges of which said court shall fully hear and determine all matters connected with the action of said board from which appeal is taken, and the decision of said court shall be final; should no such appeal be taken within sixty days, or should said appeal result in the affirmation of the action of said board, the clerk of the circuit court or courts where said license so revoked shall have been recorded shall, upon due notice from the secretary-treasurer of said board, strike off the name of said party from the list of licensed practitioners recorded upon said register. At any time within two years from the revocation of any license, the board revoking the same may, by a vote of five members, issue without examination a new license to the person whose license was so revoked; but after the expiration of two years such person can obtain a new li-

cense only by compliance with the same requirements which are imposed on other applicants for licenses under this sub-title.

1947 Supp., sec. 144A. 1943, ch. 600, sec. 144A. 1945, ch. 327, sec. 144A.

145. All advertising by all persons practicing medicine and surgery in this State is prohibited except the following:

(a) A physician or surgeon may use a personal professional card of not more than 3½" x 2", upon which may be printed only his name, title, address, specialty, telephone number and office hours.

(b) Removal notices may be mailed by any physician or surgeon notifying any bona fide patient of said physician or surgeon that he is removing his offices from his present address to the address set forth on said notice. Said notice shall be not more than 5" x 7" and may only contain the name, title, specialty, telephone number, office hours and new address and old address.

(c) Each physician or surgeon may exhibit on the door or wall of the building wherein he practices not more than two signs on which may be placed the name and title or degree of such person, and his specialty, the letters of which shall not exceed three inches square. In addition he may exhibit such sign on the door of his office in addition to those on the door or wall of such building.

1947 Supp., sec. 144B. 1943, ch. 600, sec. 144B. 1945, ch. 327, sec. 144B.

146. Any person practicing medicine or surgery who shall solicit or advertise by mail, card, newspaper, pamphlet, radio or otherwise to the general public, except as set out in Section 145, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00 for each offense. Provided, however, that notices by mail to bona fide patients of times for periodic examinations shall not be construed as soliciting or advertising.

An. Code, 1947 Supp., sec. 144C. 1943, ch. 600, sec. 144C.

147. A violation of the provisions of Sections 145 or 146 shall constitute unprofessional conduct and the license of any physician or surgeon guilty of such violation shall be subject to revocation as set out in Section 144 of this Article.

FILED
FEB 27 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 734

KENNETH C. HITCHCOCK, ET AL.,
Appellants,

VS.

HENRY T. COLLENBERG, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

Appellees in the above entitled case move to affirm on the ground that the questions presented are so unsubstantial as not to need further argument.

SUPPORTING BRIEF

In support of the aforegoing motions, the Appellees make the following statements:

Statement of Case

The Appellants in this suit filed a complaint in the United States District Court for the District of Maryland against the Appellees in the Appellees' official capacity as

officers of the State of Maryland. They alleged that one of the Appellants, Kenneth C. Hitchcock, a resident of the State of Maryland, had been continuously engaged in the practice of naturopathy in the State of Maryland since 1938. They set forth numerous views and interpretations on their part of what naturopathy is, and averred that the Appellees, who are members of the medical licensing boards of Maryland, had refused to issue a license to Kenneth C. Hitchcock for the practice of naturopathy, because he did not meet the requirements of the Medical Practice Act of the State of Maryland for the licensing of physicians. They alleged that the other Appellees, namely: the Attorney General of Maryland, the State's Attorney for Baltimore City and the Police Commissioner of Baltimore City were charged with the duty of enforcing the Medical Practice Act. Before the hearing of the case, the State had commenced criminal proceedings under the Act against the Appellant Hitchcock, and pleadings were amended. They asked the Court to declare the Maryland Medical Practice Act to be in violation of the Laws and Constitution of the United States and in violation of the Laws and Constitution of the State of Maryland; they asked the Court to construe the meaning of the Medical Practice Act in Maryland; they asked the Court to decree that the practice of naturopathy in the State of Maryland should be confined to trained naturopaths, and that the practice should not be engaged in by practitioners of any other healing faith; sought a declaratory decree that naturopathy was a separate and distinct branch of the healing arts entirely beyond the scope of the Medical Practice Act of the State of Maryland, namely, Sections 116 through 144C of Article 43 of the Annotated Code of Maryland; they asked for a temporary and a permanent injunction to restrain the Appellees from attempting to enforce the statute, civilly and criminally, and

further asked that the Court determine whether the Medical Practice Act was in fact invalid in whole or in part.

Two of the Appellants, namely, Mary S. Gebhardt, who was a resident of the State of Pennsylvania, and Lewis Kern, who was a resident of the State of Ohio, asked that the Court grant Kenneth C. Hitchcock the privilege of practicing naturopathy within the State of Maryland in order that they might be treated by him in the State, he being the person of their choice to treat their ailments. They asked that they be permitted to select the form of healing art of their choice, in the State of Maryland, claiming that their constitutional rights were being violated because they were not being permitted to do so.

State law construed by a State Court is followed by Federal Court when no violation of Federal Constitution is involved.

The Appellants asked the Trial Court to construe the laws of the State of Maryland. When construing the laws of a State, the Federal courts are bound by the decision of the highest appellate court of that State, as to the meaning of the laws of that State, assuming there is no question involved as to the violation of the Federal Constitution.

Title 28 U.S.C.A. Sec. 1652 reads as follows:

> "*State laws as rules of decision.* The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

In *Erie Railroad v. Tompkins*, 304 U.S. 64 at 78, 82 L. Ed. 1188 at 1194, the Supreme Court of the United States said:

> "Third. Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be ap-

plied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. * * *"

See also *Watson v. Maryland*, 218 U.S. 173 at 175.

Section 138 of Article 43 of the Annotated Code of Maryland (1951 Ed.) reads as follows:

"Any person shall be regarded as practicing medicine within the meaning of this sub-title who shall append to his or her name the words or letters 'Dr.', 'Doctor', 'M.D.', or any other title in connection with his name, with the intent thereby to imply that he or she is engaged in the art or science of healing, or in the practice of medicine in any of its branches, or who shall operate on, *profess to heal, prescribe for, or otherwise treat any physical or mental ailment or supposed mental ailment of another*, or who shall for hire or for any gratuity or compensation, either directly or indirectly to him or her paid, *undertake by any appliance, operation or treatment of whatever nature, to cure, heal or treat any bodily or mental ailment or supposed ailment of another;* or who for any hire, gratuity or compensation, either directly or indirectly to him or her paid, by or for any patient, shall undertake to *treat, heal, cure, drive away or remove any physical or mental ailment, or supposed ailment of another, by mental or other process exercise or invoked on the part of either the healer or the patient or both;* but nothing herein contained shall be construed to apply to gratuitous services, nor to any resident or assistant resident physicians or students at hospitals in the discharge of their hospital or dispensary duties, or in the

office of physicians, or to any physician or surgeon from another State, territory or district in which he resides when in actual consultation with a legal practitioner of this State; or to commissioned surgeons of the United States army, or navy, or insane hospital service, or opticians or chiropodists, or to midwives, or to masseurs, or other manual manipulators who use no other means; nor shall the provisions of this subtitle apply to physicians or surgeons residing on the borders of a neighboring State, and duly authorized under the laws thereof to practice medicine or surgery therein, whose practice extends into the limits of this State; provided, that such practitioners shall not open an office or appoint places to meet their patients or receive calls within the limits of this State without complying with the provisions of this sub-title; provided, that the same privileges be accorded to licensed physicians of this State; provided, further, that nothing in this sub-title shall annul any of the provisions of article 32, title 'Dentistry', nor shall apply to any registered graduate of dental surgery now practicing in the said State of Maryland, with the sign titles: Dentist, surgeon dentist, dental surgeon, or stomatologist; and provided further, that nothing herein contained shall be so construed as to prevent or in any way make unlawful or interfere with the sale by manufacturing, wholesale or retail druggists, or any persons dealing in drugs or medicines of any proprietary or patent medicine or any official or standard drug or medicine." (Emphasis supplied.)

The Court of Appeals of Maryland, the court of last resort in the State, has previously decided all the points concerning the interpretation of State Laws raised by the Appellants. In *Aitchison v. State*, 204 Md. 538 (cert. den. by the Supreme Court, 348 U.S. 880), the Court said at p. 545:

"Section 138 of the Medical Practice Act now defines a practitioner of medicine as follows:

> 'Any person shall be regarded as practicing medicine within the meaning of this sub-title who shall append to his or her name the words or letters "Dr.", "Doctor", "M.D.", or any other title in connection with his name, with the intent thereby to imply that he or she is engaged in the art or science of healing, or in the practice of medicine in any of its branches, or who shall operate on, profess to heal, prescribe for, or otherwise treat any physical or mental ailment or supposed mental ailment of another, or who shall for hire or for any gratuity or compensation, either directly or indirectly to him or her paid, undertake by any appliance, operation or treatment of whatever nature, to cure, heal or treat any bodily or mental ailment or supposed ailment of another; or who for any hire, gratuity or compensation, either directly or indirectly to him or her paid, by or for any patient, shall undertake to treat, heal, cure, drive away or remove any physical or mental ailment, or supposed ailment of another by mental or other process, exercised or invoked on the part of either the healer or the patient or both; * * *'
>
> "It is absolutely clear from the definite language of the statute that the Legislature intended 'practice of medicine' to include not only the application of medicine to patients, but any practice of the art of healing disease and preserving the health other than those special branches of the art that were expressly excepted."

At page 550, the Court said:

> "It was argued by appellant in the instant case that, since the Legislature had expressly provided for special licensing of osteopathy, chiropody, and chiropractic, and had made no provision for the licensing of naturopaths, it should be inferred that naturopaths may practice without a license. We cannot accept that contention. As appellant stated, bills have been introduced in the Legislature to permit and regulate the practice

of naturopathy. The very fact that no such legislation has been passed indicates that the Legislature has not intended thus far to permit naturopaths to practice without a license. The Legislature has been careful to prevent medical treatments without the protection afforded by some official regulatory board. The law now demands a license for hair dressers and beauty culturists. Secs. 490-516. A certificate of registration may be obtained for the practice of trichology, which is defined as 'the massaging, cleansing, stimulating, exercising or similar work upon the scalp, by the use of mechanical or electrical apparatus or appliances, or cosmetics, preparations, tonics, antiseptics, creams or lotions, or by other means.' Sec. 495.

"In view of the solicitude which the Legislature has displayed for the protection of the health of the people, the breadth of the language it has employed to define the practice of medicine, and its failure to exempt naturopaths from the definition, we are compelled to hold that the Medical Practice Act prohibits a person desiring to engage in the healing art by the practice of naturopathy from doing so without a license from the State Board of Medical Examiners. * * *"

Appellant also asked the Federal District Court to declare that the Maryland Medical Practice Act violated the Maryland Constitution, but the Court of Appeals of Maryland, the court of last resort in the State, has decreed that the Medical Practice Act is constitutional under the terms of the Constitution of the State of Maryland. *Aitchison v. State, supra; Watson v. State,* 105 Md. 650.

The trial court was without jurisdiction to consider the questions concerning the interpretation of the State Laws and the State Constitution, and rightfully refused to decide those points. If they had decided them they would have had to follow the decisions of the Maryland Court of Appeals.

The Maryland Medical Practice Act does not Violate the Anti-Trust Laws.

The Appellants also alleged that the Maryland Medical Practice Act, as interpreted and enforced by the courts of the State of Maryland, violated the provisions of Title 15 U.S.C.A. Secs. 1 through 27 and 44, in that it created a monopoly. Title 15 U.S.C.A. applies only to restraints placed upon interstate commerce by individuals, and does not apply to restraints placed upon interstate commerce by States or to restraints upon commerce which are entirely intrastate in nature.

In *Alabama Independent Service Station Asso., Inc. v. Shell Petroleum Corp.*, 28 Fed. Supp. 384, the Court held that the Federal Anti-Trust Acts only applied to acts which were in restraint of interstate commerce.

In *Parker v. Brown*, 317 U.S. 341, 87 L. Ed. 315, the State of California, by legislation, restricted the interstate movement of raisins from the grower to the packer. The question arose as to whether or not the restriction placed by the State on the movement of the raisins was a violation of the Sherman Anti-Trust Act. The Court, at p. 350 of U.S. 317 said:

> "* * * We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.
>
> "The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain

> state action or official action directed by a state. The Act is applicable to 'persons' including corporations (§7), and it authorizes suits under it by persons and corporations (§15). * * *"

In *United States v. E. C. Knight Co.*, 156 U.S. 1, 39 L. Ed. 325, the Court said:

> "It cannot be denied that the power of a state to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion', is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each state from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the states to deal with, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by state legislative power. * * *"

The control by a State of the practice of medicine, by licensing within the State only those who are qualified to practice is not a regulation of interstate commerce. It is a regulation only of commerce within the geographical boundaries of the State. The regulation of the licensing of qualified practitioners does not in any way create a monopoly. Anyone who is qualified to do so may take the examination and, upon successfully passing it, become a licensed practitioner in the State. The Appellant Hitchcock

has the same rights as all others, and if qualified, may practice medicine in this State. He has been subjected to no greater hazard than any other individual who attempts to practice medicine without a license.

One of the Appellants is the Maryland Naturopathic Association, Inc., a body corporate. It, as such, cannot itself practice medicine or naturopathy and has no property interest which may be affected by any of the alleged acts on the part of the Appellees to this cause and, accordingly, it has no right to enter into this suit, as a party plaintiff, against the Defendants. It had no right to complain of an action on the part of an official of the State which did not affect it, but might affect the property rights of the individual members of the corporation. In *Alabama Independent Service Station, Inc. v. Shell Petroleum Corp., supra,* the Court, in holding that the Association had no right to be a party plaintiff in that suit, said:

> "Capacity of the Association Corporation which is a plaintiff here, to sue generally is not questioned, but its capacity to enforce the separate property rights of its individual members seems unfounded in any authority of law."

See also *Clark v. Chase National Bank of the City of New York,* 45 Fed. Supp. 820; *Maryland Naturopathic Asso. v. Kloman,* 191 Md. 626 at 630; *Dvorine v. Castelberg Jewelry Corp.,* 170 Md. 661, 668.

The Maryland Act does not Violate the Fundamental Rights Guaranteed by the Federal Constitution.

Appellants also claimed that there was jurisdiction in the trial Court under Title 42 U.S.C.A., Secs. 1983 and 1985 (formerly Title 8 U.S.C.A., Sec. 47), since they claimed to have been deprived of rights, privileges and immunities secured to them by the Constitution and laws of the United

States. Under the Medical Practice Act of the State of Maryland, the Appellants have had the equal protection of the law. They were protected in the same manner as every other citizen of the State of Maryland, or every citizen of a foreign State of the United States. They were not deprived of any rights without due process of law as there is no inherent right in any individual to follow a particular profession. It is well established by the decision of the courts of the United States and of the courts of the States of the United States that the States may regulate those callings or professions which concern the public health, and that there is no violation of constitutional rights as long as they do not act unreasonably in doing so.

In the case of *Dent v. West Virginia,* 129 U.S. 114, 32 L. Ed. 623, the Court said:

> "Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified. The same reasons which control in imposing conditions, upon compliance with which the physician is allowed to practice

in the first instance, may call for further conditions as new modes of treating disease are discovered, or a more thorough acquaintance is obtained of the remedial properties of vegetable and mineral substances, or a more accurate knowledge is acquired of the human system and of the agencies by which it is affected. It would not be deemed a matter for serious discussion that a knowledge of the new acquisitions of the profession, as it from time to time advances in its attainments for the relief of the sick and suffering, should be required for continuance in its practice, but for the earnestness with which the plaintiff in error insists that by being compelled to obtain the certificate required, and prevented from continuing in his practice without it, he is deprived of his right and estate in his profession without due process of law. We perceive nothing in the statute which indicates an intention of the Legislature to deprive one of any of his rights. No one has a right to practice medicine without having the necessary qualifications of learning and skill; and the statute only requires that whoever assumes, by offering to the community his services as a physician, that he possesses such learning and skill, shall present evidence of it by a certificate or license from a body designated by the State as competent to judge of his qualifications."

In *Barsky v. Board of Regents*, 347 U. S. 442, at 449, the Court said:

> "It is elemental that a State has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of the State's police power. The State's discretion in that field extends naturally to the regulation of all professions concerned with health."

In *Semler v. Oregon*, 294 U.S. 608, 79 L. Ed. 1086, the appellant challenged the constitutionality of an Oregon statute imposing restrictions on advertising by dentits. In over-

ruling each contention of the appellant, Mr. Chief Justice Hughes, speaking for the Court, said:

> "We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards of conduct from those which are traditional in the competition of the market place. The community is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon a public peculiarly susceptible to imposition through alluring promises of physical relief. And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards."

In *Graves v. Minnesota*, 272 U.S. 425, 71 L. Ed. 331, the State of Minnesota passed a statute prohibiting the practice of dentistry by persons who had not been licensed by a Board of Dental Examiners, and required that every applicant for a license show that he had been granted a diploma from a dental college of good standing. Graves had applied for a license but was refused an examination by the Board because he had no diploma from an accredited dental college. He attacked the constitutionality of the statute. The Court in that case said:

> "It is well settled that a state may, consistently with the 14th Amendment, prescribe that only persons possessing the reasonably necessary qualifications of learn-

ing and skill shall practice medicine or dentistry. Dent v. West Virginia, 129 U.S. 114, 122, 32 L. ed. 623, 626, 9 Sup. Ct. Rep. 231; Douglas v. Noble, 261 U.S. 165, 167, 67 L. ed. 590, 592, 43 Sup. Ct. Rep. 303. * * *"

"* * * And the case is to be considered in the light of the principle that the state is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest. Great Northern R. Co. v. Minnesota, 246 U.S. 434, 439, 62 L. ed. 817, 819, 38 Sup. Ct. Rep. 346; Gitlow v. New York, 268 U.S. 652, 668, 69 L. ed. 1138, 1146, 45 Sup. Ct. Rep. 625.

* * * * * *

"This conclusion is in harmony with the decisions in other state courts involving the constitutional validity of statutes regulating the practice of medicine or dentistry which contain similar or analogous provisions, as well as with the earlier Minnesota decisions. Re Thompson, 36 Wash. 377, 78 Pac. 899, 2 Ann. Cas. 149; State v. Creditor, 44 Kan. 565, 21 Am. St. Rep. 306, 24 Pac. 346; State ex rel. Walker v. Green, 112 Ind. 462, 14 N.E. 352; People v. Phippin, 70 Mich. 6, 37 N.W. 888; Ex parte Spinney, 10 Nev. 323; State v. Vandersluis, 42 Minn. 129, 6 L.R.A. 119, 43 N.W. 789; State v. Graves, 161 Minn. 422, 201 N.W. 933. And see Hewitt v. Charier, 16 Pick. 353; Ex parte Whitley, 144 Cal. 167, 77 Pac. 879, 1 Ann. Cas. 13; Wert v. Clutter, 37 Ohio St. 347; Timmerman v. Morrison, 14 Johns. 369. * * *"

In *Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716, 95 L. ed. 1317 at 1324, the Court said:

" 'The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary

> avocations of life.' (U.S.) 4 Wall at 379, 380. See also Cummings v. Missouri, supra ((U.S. 4 Wall at 318, 319, 18 L. ed. 361, 362)). This doctrine was reaffirmed in Dent v. West Virginia, 129 U.S. 114, 32 L. ed. 623, 9 S. Ct. 231 (1889), in which Mr. Justice Field, who had written the Cummings and Garland opinions, wrote for a unanimous Court upholding a statute elevating standards of qualification to practice medicine. And in Hawker v. New York, 170 U.S. 189, 42 L. ed. 1002, 18 S. Ct. 573 (1898), the Court upheld a statute forbidding the practice of medicine by any person who had been convicted of a felony. Both Dent and Hawker distinguished the Cummings and Garland cases as inapplicable when the legislature establishes reasonable qualifications for a vocational pursuit with the necessary effect of disqualifying some persons presently engaged in it."

See also *Watson v. Maryland*, supra; *Williams v. Arkansas*, 217 U.S. 79; *Hawker v. United States*, 170 U.S. 189.

The recent cases of *Taylor v. Oklahoma*, 1 L. Ed. 2d 38; and *Dantzler v. Callison*, 1 L. Ed. 2d 235, which were similar in nature, were dismissed without hearing.

In *State v. Henning*, 83 Ohio App. 445, 78 N.E. 2d 588, the appellant was charged with practicing medicine without a license. The statute provided that "A person shall be regarded as practicing medicine * * * who examines or diagnoses for a fee or compensation of any kind, or prescribes, advises, recommends, administers or dispenses for a fee or compensation of any kind, direct or indirect, a drug or medicine, appliance, application, operation, or treatment of whatever nature for the cure or relief of a wound, fracture or bodily injury, infirmity or disease * * *." The prosecuting witness testified that appellant prescribed medicine for her and that he injected oxygen into her leg. The appellant contended that he was not practicing medicine in

any of its branches, but was practicing naturopathy. The court said:

> "* * * We are not interested in what name or title the appellant gives to his profession, but we are only interested in whether or not what he did constituted the practice of medicine as defined by G.C. Section 1286 * * *."

And further:

> "Another error assigned is that the Court erred in rejecting evidence offered by the defendant by which he attempted to explain the difference between medicine and naturopathy. This evidence was properly rejected, we think, because as we stated previously we are not interested in what constitutes naturopathy, but only in what constitutes the practice of medicine * * *."

An appeal to the Supreme Court of Ohio was dismissed in *State, Appellee v. Henning, Appellant,* 150 Ohio St. 48, 80 N.E. 2d 164.

In *Crum v. State Board of Medical Registration and Examination,* 219 Ind. 191, 37 N.E. 2d 64, the Court said that:

> "Licenses to practice chiropractic, naturopathy, and electrotherapy may be said to be limited licenses to practice medicine, * * *."

In Louisiana, *State Board of Medical Examiners v. Fife,* 162 La. 681, 111 Sou. 58, 54 A.L.R. 594, it was contended that a Louisiana law was unconstitutional because it required chiropractors to study subjects which were outside the scope of their practice. In overruling the contentions made against the law, the court observed that no person has a natural or absolute right to practice medicine or surgery, but that the right is granted to those who meet the requirements of law; and that the Legislature, in defining the requirements may not prescribe, as a condition to the right to

practice, knowledge of a subject which bears no relation to the practice of medicine. The court continued:

> "Our conclusion is that plaintiffs have no constitutional grounds to complain, by reason of the fact that, before being permitted to treat the sick, they must make it appear, in the manner prescribed by law, that they have an adequate knowledge of materia medica and surgery, and of the remaining subjects, required by sec. 2 of Act 56 of 1914, as amended by sec. 2 of Act 54 of 1918, quoted above. While materia medica and surgery are not used in the chiropractic system, still they, as well as the other subjects required by the act, as amended, bear a relation to the practice of medicine as to general science and that, in view of the fact that the legislature is not bound to recognize every school of medicine, and deal with it as such, is sufficient to prevent the act from being unconstitutional."

The judgment in this case was affirmed by the Supreme Court of the United States, in *Fife v. Louisiana, etc.*, 274 U.S. 720, 71 L. Ed. 1324, 47 S. Ct. 590. The per curiam order of the Supreme Court was:

> "Affirmed on the authority of Dent v. West Virginia, 129 U.S. 114, 32 L. ed. 623, 9 Sup. Ct. Rep. 231; Douglas v. Noble, 261 U.S. 165, 67 L. ed. 590, 43 Sup. Ct. Rep. 303; and Graves v. Minnesota, 272 U.S. 425, ante, 331, 47 Sup. Ct. Rep. 122."

See also *Mitchell v. Greenough*, 100 Fed. 2d 184, which dealt with the practice of law, wherein the Court said, at p. 185:

> "* * * We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. Bradwell v. State of Illinois, 16 Wall. 130, 21 L. Ed. 442; Ex parte Lockwood, 154 U.S. 116, 14 S. Ct. 1082, 38 L. Ed. 929. * * *"

Two of the Appellants in this cause were non-residents of the State of Maryland, namely: Mary S. Gebhardt, who

was a resident of the State of Pennsylvania, and Lewis Kern, a resident of the State of Ohio. The other Appellants were residents of the State of Maryland. The Eleventh Amendment to the Constitution of the United States reads as follows:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Under the above Section of the United States Constitution, a State is not subject to suit in any court by a resident of another or a foreign State unless it consents to be sued. A citizen of a State may not sue the State in any court because of the inherent nature of sovereignty.

In *Great Northern Life Insurance Co. v. Read,* 322 U.S. 47, 88 L. Ed. 1121 at 1124, the Court said:

> "This ruling that a state could not be controlled by courts in the performance of its political duties through suits against its officials has been consistently followed. Chandler v. Dix, 194 U.S. 590, 48 L. ed. 590, 24 S. Ct. 766; Fitts v. McGhee, 172 U.S. 516, 529, 43 L. ed. 535, 541, 19 S. Ct. 269; Murray v. Wilson Distilling Co., 213 U.S. 151, 167, 53 L. ed. 742, 750, 29 S. Ct. 458; Lankford v. Platte Iron Works Co., 235 U.S. 461, 468, et seq., 59 L. ed. 316, 318, 35 S. Ct. 173; Re New York, 256 U.S. 490, 500, 65 L. ed. 1057, 1062, 41 S. Ct. 588; Worcester County Trust Co. v. Riley, 302 U.S. 292, 296, 299, 82 L. ed. 268, 273, 275, 58 S. Ct. 185. Efforts to force, through suits against officials, performance of promises by a state collide directly with the necessity that a sovereign must be free from judicial compulsion in the carrying out of its policies within the limits of the Constitution. Monaco v. Mississippi, 292 U.S. 313, 320, 78 L. ed. 1282, 1284, 54 S. Ct. 745; Louisiana v. Jumel, 107 U.S. 711, 720, 27 L. ed. 448, 451, 2 S. Ct. 128. A

state's freedom from litigation was established as a constitutional right through the Eleventh Amendment. The inherent nature of sovereignty prevents actions against a state by its own citizens without its consent. Hans v. Louisiana, 134 U.S. 1, 10, 16, 33 L. ed. 842, 845, 847, 10 S. Ct. 504."

In *Missouri v. Fiske*, 290 U.S. 18, 78 L. Ed. 145, at 149, the Court said:

> "*Second.* The Eleventh Amendment is an explicit limitation of the judicial power of the United States. 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State. However important that power, it cannot extend into the forbidden sphere. Considerations of convenience open no avenue of escape from the restriction. The 'entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given.' Re New York, 256 U.S. 490, 497, 65 L. ed. 1057, 1060, 41 S. Ct. 588. Such a suit cannot be entertained upon the ground that the controversy arises under the Constitution or laws of the United States. Hans v. Louisiana, 134 U.S. 1, 10, 33 L. ed. 842, 845, 10 S. Ct. 504; Palmer v. Ohio, 248 U.S. 32, 34, 63 L. ed. 108, 109, 39 S. Ct. 16; Duhne v. New Jersey, 251 U.S. 311, 313, 314, 64 L. ed. 280, 281, 40 S. Ct. 154."

In *Gallena v. Scott* (N.J.), 94 A. 2d 312 at 315, the Court said:

> "Immunity from suit without consent, signified by legislative action or waiver, is an attribute of sovereignty. The principle may not be subverted by indirection. The immunity is grounded in the strongest considerations of public policy, related to the security of the government and its administrative integrity. Fitts v. McGhee, 172 U.S. 516, 19 S. Ct. 269, 43 L. Ed.

> 535 (1899). Where the substantial rights of the State would be directly and adversely affected if there were judgment according to the demand made, the State is a necessary party defendant, and if it cannot be made a party, for want of consent to be sued, then the suit is not maintainable. Schwing v. Miles, 367 Ill. 436, 11 N.E. 2d 944, 113 A.L.R. 1504 (Sup. Ct. 1937). The question is whether the suit is in reality against the State itself, as a means of controlling its action or imposing a liability."

Suit against the officers of a State to keep them from performing their duties is a suit against the State. See *Fitts v. McGhee,* 172 U.S. 532; *Gallena v. Scott,* supra. In order to maintain an action to enjoin officers of a State in the performance of their duties, a complainant must show that immediate and irreparable damage will be done to him. Federal courts will not issue injunctions to restrain the action of State officers on the mere ground that the officers are acting unconstitutionally, or to prevent the bringing of suits in the State court, or to prevent the enforcement of Criminal State statutes claimed to be unconstitutional. There must be exceptional circumstances, a clear showing of the existence of a right, and a real, immediate threatened irreparable injury to that right. The Complainant must show that an injunction is necessary to afford adequate protection of constitutional rights before it will issue.

In *Watson v. Buck,* 313 U.S. 387, 85 L. Ed. 1416 at 1423, the Court said:

> "Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. 'No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution

even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.' Beal v. Missouri P.R. Corp., 312 U.S. 45, 49, ante, 577, 579, 61 S. Ct. 418. A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. And this is especially true where there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multi-provisioned statue. * * *"

In *Fitts v. McGhee, supra,* the Court said:

"* * * At the present term of the court, in *Harkrader v. Wadley,* 172 U.S. 148, 169, 170 (*ante,* 399), we said: 'In proceeding by indictment to enforce a criminal statute the state can only act by officers or attorneys, and to enjoin the latter is to enjoin the state.' Again: 'Much more are we of opinion that a circuit court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a state court in the name of a state to enforce the criminal laws of such state.' Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of habeas corpus, to discharge from custody any person held by state authorities under criminal proceedings instituted under state enactments, if such enactments are void for repugnancy to the Constitution, laws or treaties of the United States. But even in such case we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the state court. *Ex parte Royall,* 117 U. S. 241 (29:868); *New York v. Eno,* 155 U.S. 89 (39:80); *Whitten v. Tomlinson,* 160 U.S. 231 (40:406); *Baker v. Grice,* 169 U.S. 284 (42:748). But the existence of the power in the courts of the United States to discharge upon habeas corpus by no means implies that they may, in the exercise of their

> equity powers, interrupt or enjoin proceedings of a criminal character in a state court. The plaintiffs state that the toll-gatherers in their service had been indicted in a state court for violating the provisions of the act of 1895 in respect of tolls. Let them appear to the indictment and defend themselves upon the ground that the state statute is repugnant to the Constitution of the United States. The state court is competent to determine the question thus raised and is under a duty to enforce the mandates of the supreme law of the land. *Robb v. Connolly*, 111 U.S. 624 (82:542). And if the question is determined adversely to the defendants in the highest court of the state in which the decision could be had, the judgment may be re-examined by this court upon writ of error. That the defendants may be frequently indicted constitutes no reason why a Federal court of equity should assume to interfere with the ordinary course of criminal procedure in a state court."

See also *Bradford v. Hurt*, 84 F. 2d 722; *Reed v. Lehman*, 91 F. 2d 919.

The Maryland law does not prohibit the practice of naturopathy but allows any person who meets the qualifications necessary to secure a license to practice medicine to apply the principles of naturopathy in his practice. Certainly the two non-resident Appellants showed no deprivation of the constitutional rights because Kenneth Hitchcock was not permitted to practice naturopathy. They could be treated elsewhere or even in the State of Maryland by a practitioner of their choice who applied the modalities of naturopathy as long as he was properly licensed. It is only when a State is violating the constitutional rights of a person that that person may bring suit in the Federal courts against the State. In this case, there has been only a vague and very general allegation of the violation of Appellants' constitutional rights. No facts were set out or offered to

sustain the allegations. See *Dent v. West Virginia, supra; Graves v. Minnesota, supra; Fitts v. McGhee, supra; Great Northern Life Insur. Co. v. Read, supra.*

The Appellants also asked the Court to declare and decree that the practice of naturopathy in the State of Maryland should be confined to naturopaths who were trained and skilled in the theory and practice of naturopathy, and should not be engaged in by practitioners of any other system of the Healing Art. That was a request for the Trial Court to act as the Legislature. The Courts should not usurp the function of the Legislature by making judicial law.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the Appellants failed to show in the court below that Appellees, by enforcing the Medical Practice Act, or that the Medical Practice Act, violated any of their constitutional rights, and the Motion to Dismiss filed therein by the Appellees was properly granted. The questions presented are so unsubstantial as not to need further argument. Therefore, this Motion to Affirm should also be granted and the costs of this cause should be assessed against the Appellants.

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Decisions Per Curiam.

No. 734. HITCHCOCK ET AL. *v.* COLLENBERG ET AL. Appeal from the United States District Court for the District of Maryland. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. *Taylor* v. *Oklahoma ex rel. Rutherford,* 352 U. S. 805; *Dantzler* v. *Callison,* 352 U. S. 939; *Dent* v. *West Virginia,* 129 U. S. 114.

John J. O'Connor, Jr. and *Charles Orlando Pratt* for appellants. *C. Ferdinand Sybert,* Attorney General of Maryland, *Stedman Prescott, Jr.,* Deputy Attorney General, and *James H. Norris, Jr.,* Special Assistant Attorney General, for appellees. Reported below: 140 F. Supp. 894.